



CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CERTIFICATION GUIDELINES (Equal Business Opportunity Ordinance) Section 26.6 EBO Program Eligibility



Equal Opportunity/Equity Assurance Department

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Socially Disadvantaged Business Enterprise (SDBE) means a business that is at least fifty - one (51%) percent owned by one or more socially and economically disadvantaged individuals or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more socially and economically disadvantaged individuals. Additionally, a SDBE is one:

- Whose management, policies, major decisions and daily operations are independently managed by one or more socially and economically disadvantaged individuals;
- Which is a Small Business Enterprise;
- Which has a physical location from which to engage in for profit activities in the scope(s) of expertise in the City's Marketplace; and
- Which is certified as a SDBE by the City of Durham

"Socially Disadvantaged" means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his/her identification as a member of a group and without regard to individual qualities. A socially disadvantaged individual must be a citizen (or lawfully admitted permanent resident) of the United States who is either:

- Black/African American, which includes persons having origins in any of the Black racial groups of Africa;
- Female; or
- Any individual found by the City on a case-by-case basis to have been subjected to racial or ethnic prejudice or cultural bias within American society because of his/her identity a member of a group without regard to individual qualities.

"Economically Disadvantaged" means an individual whose Personal Net Worth is less than \$750,000.

Eligibility Standards

The following standards shall be used in determining whether a business is owned and controlled by one or more Socially and Economically Disadvantaged (SED) individuals, and therefore, is eligible to be certified as a SDBE:

- (a) Only businesses that meet the criteria of SDBEs may be certified for a participation in the program.

Eligibility Standards (continued)

- (b) The applicant for certification as a SDBE has the burden of persuasion based on the preponderance of the evidence.
- (c) Only a firm owned by a SED person(s) may be certified as a SDBE.
 - (1) The firm's ownership by a SED person must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The SED owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
 - (2) The contributions of capital or expertise by the SED owner(s) to acquire the ownership interest must be real and substantial. If expertise is relied upon as part of a SED owner's contribution to acquire ownership, the expertise must be of outstanding quality in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success and specific to the type of work the firm performs. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (d) Only a firm that is managed and controlled by the SED owners may be certified as a SDBE.
 - (1) A firm must not be subject to any formal or informal restrictions that limit the discretion of the SED owner(s) that limit the discretion of the SED owner(s). There can be no restriction through corporate charter provisions, bylaw provisions, contract or any other formal or informal devices that prevent the SED owner(s) without the cooperation or vote of any on-SED person, from making any business decision of the firm.
 - (2) The SED owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy and operations.
 - (3) The SED owner(s) may delegate various areas of the management, policy making or daily operations of the firm to persons who are not SED. Such delegations of authority must be revocable and the SED owners must retain the power to hire and fire any such person. The SED owners must exercise control over the firm's operations, work, management and policies.

- (4) The SED owner(s) must have an overall understanding of and managerial and technical competence, experience and expertise, directly related to the firm's operations and work. The SED owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management and policy making.
 - (5) If any law requires the owners to have a particular license or other credential to operate, own and/or control a certain type of business, then the SED owner(s) must possess the required license or credential.
 - (6) A SED owner cannot engage in outside employment or other business interest that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its activities.
- (e) Only an independent firm may be certified as a SDBE. An independent firm is one whose viability does not depend on its relationship with another firm. In determining whether an applicant is an independent business, the City will:
- (1) Scrutinize relationships with non-SDBEs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - (2) Consider whether present or recent employer/employee relationships between the SED owner(s) of the applicant and on-SDBEs or persons associated with on SDBEs compromise the applicant's independence.
 - (3) Examine the applicant's relationships with on-SDBE prime contractors to determine whether a pattern of exclusive primary dealings with a prime contractor compromises the applicant's independence.
 - (4) Consider the consistency of relationships between the applicant and on-SDBEs with normal industry practice.
- (f) In order to be certified as a SDBE, a firm must be an Small Business Enterprise (SBE) and must have a physical location, in the City's Contracting Marketplace, from which it engages in for profit activities in the scope(s) of its expertise.

Eligibility Standards (continued)

- (g) An applicant shall be certified only for specific types of work in which the SED owner(s) has the ability and expertise to manage and control the firm's operations and work.
- (h) The City shall certify the eligibility of Joint Ventures in which the Joint Venturers are SDBEs and non-SDBEs.
- (i) In lieu of conducting its own investigation to determine whether an applicant is eligible for certification, the City may consider a formal certification by another entity to determine whether the applicant meets the requirements of the program, provided that the City determines that the certification standards of such entity is comparable to those of the City.
- (j) A firm whose average annual gross receipts exceed the size standards for the SBEs for three consecutive years shall graduate from the program.

Certification and Renewal of Certification

The certification status of all SDBEs shall be reviewed every two years by the City. Failure of a SDBE to seek recertification within 90 days from the date of receipt of written notice shall result in decertification. It is the responsibility of the SDBE to notify the City of any change in its circumstances affecting its continued eligibility for the program.

Appeal of Certification Denial

Any business denied certification, re-certification or been decertified may protest the denial or decertification as follows:

- (1) Within 7 days of receipt of denial of certification or recertification, or notice of intent to decertify, the firm may protest such action in writing to the City Manager.
- (2) A hearing shall be held by the City Manager at which time the firm may present additional facts and evidence in support of its eligibility. The City Manager shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of documents. The applicant's failure to comply promptly with this request may be grounds for denial of relief sought by the applicant.

Appeal of Certification Denial(continued)

- (3) The City Manager shall send notice of the written decision to the firm within 30 days of the hearing. The City Manger's decision shall be final.
- (4) A firm found ineligible cannot apply for certification for one year after the effective date of the final decision.